

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 06-121
	)	
2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

**COMMENTS OF CONSUMERS UNION, CONSUMER FEDERATION OF AMERICA AND FREE PRESS  
ON “COALITION REQUEST FOR UNDERLYING DATA”**

Consumers Union, Consumer Federation of America and Free Press (“Consumers Union et al.”), through undersigned counsel, respectfully submit these Comments in response to the “Coalition Request for Underlying Data” (“Data Request”) filed by the Smaller Market Broadcasters Coalition (the “Coalition”) on December 7, 2006. The Coalition requests that a study (the “Michigan Study”) authored by two University of Michigan communications studies scholars, Dr. Michael Zhaoxu Yan and Yong Pin Park, “not be given any consideration until the underlying data are placed on the record and the

public has had an opportunity to evaluate those data and comment on the Study.”<sup>1</sup> For the reasons given below, the Commission should dismiss the Coalition’s request.

## DISCUSSION

### The Coalition Mischaracterizes Our Use of the “Michigan Study.”

The Coalition incorrectly asserts that “[t]he Michigan Study was relied upon heavily” in our initial comments.<sup>2</sup> The Coalition, without citation to any specific portion of our comments, makes the following claim:

For example, Consumers Union et al. assert that the Michigan Study shows that duopolies have no effect on the amount of local news programming broadcast by local stations.

Data Request, at 2.

The Coalition’s failure to support its claim with even a single page citation is of particular significance, given that our purported “heavy reliance” on the Michigan Study is the foundation for its Data Request.

The Michigan Study is but one of several hundred papers, studies and articles cited in our 717-page initial comments. The Michigan Study is only one of several recent studies showing that duopolies do not increase the quantity or quality of local news and public affairs programming available.

The Michigan Study is first cited in our comments at footnote 495 on page 306, within Study 16, authored by Mark Cooper and S. Derek Turner (“Cooper and Turner”). Study 16 is entitled “Consolidation and Conglomeration Diminish Diversity and Do Not Promote the Public Interest: New Evidence.” As the Abstract to Study 16 indicates, Cooper and Turner reviewed a number of recent studies in the areas of cross-ownership

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<sup>1</sup> Data Request at 2, 5.

<sup>2</sup> *Id.* at 1.

and duopolies. Through rigorous statistical analysis, Cooper and Turner reached their own conclusions, including a conclusion that “duopolies...have no effect on the production of local news and public affairs programming.”<sup>3</sup>

Even a cursory review of pages 306-311 of our comments will show that Cooper and Turner did not “rely heavily” on the Michigan Study, which is referred to in the text of Study 16 as “Yan and Park.” Rather, Cooper and Turner cited the Yan and Park study as a study that confirms their own findings.

Cooper and Turner’s discussion of a series of recent studies begins with a description of a study by Yan and Napoli, published in 2004 at the Telecommunications Policy Research Conference, “using a sample of TV stations and a two-week constructed random sample of local news and public affairs programming.”<sup>4</sup> Yan and Napoli showed that “duopolies do not provide more local news and public affairs programming.”<sup>5</sup>

The Michigan Study (“Yan and Park”) and its conclusions are summarized at pages 307-310 of our initial comments. The extensive block quotations on pages 308-310 of our comments are taken directly from the Michigan Study. There Cooper and Turner note that Yan and Park “revisited the issue of the effect of duopolies on public affairs programming and local news by expanding the data set and adopting a different methodology.”<sup>6</sup> A substantial portion of the discussion in the three-plus pages devoted to the Yan and Park study focuses on the authors’ matching methodology. Efforts to match stations within and across markets are not unique to Yan and Park, as evidenced by the

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<sup>3</sup> Comments of Consumers Union et al, MB Docket No. 06-121, dated October 23, 2006 at p.301.

<sup>4</sup> *Id.* at 306.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 307.

initial comments of several of the industry commenters in this proceeding, including Media General.

At page 310 of our comments, Cooper and Turner describe how they conducted both a matched comparison analysis and a multiple linear regression analysis on a data set including identical programming information for all cross-owned stations in the U.S. and a random sample of stations. The results of the matched comparison are presented on pages 310-312.

In the latter portion of Study 16, the authors focus on recent efforts, including those employed by Yan in a 2006 study, to use multiple regression techniques to analyze programming data. Beginning on page 312 and concluding on page 329, Cooper and Turner describe the analysis of newspaper/television cross-ownership data conducted by Napoli and Yan, as well as their own analysis. The conclusions reached by Cooper and Turner regarding the effect of duopolies on news and public affairs programming are summarized on p. 329. Although the conclusions reached by Yan and Park in 2005 are consistent with those reached by Cooper and Turner in 2006, the authors of Study 16 did not “rely heavily” on the earlier Michigan Study.

The Coalition’s Data Request is Misdirected.

Even if the Commission were to accept the Coalition’s assertion that we relied heavily on the Michigan Study, that would not merit a data request. At most, the Coalition has shown that we cited and quoted lightly from a readily available published study. The Coalition’s own data request, which cites portions of the Michigan Study not quoted in our comments, provides evidence that the Yan and Park study is readily available.

Consumers Union et al. did not use, and does not have, the data set employed in the Michigan Study. At page 307 of our comments, Cooper and Turner describe how Yan and Park in 2005 expanded the data set used in the original (2004) Napoli and Yan study. Similarly, at page 310, Cooper and Turner explain that the data set used in Study 16 was also based upon the random sample of television stations used by Napoli and Yan in the 2004 study, with the addition of substantial additional data, “the identical programming information for all cross-owned stations in the U.S.”

Because Consumers Union et al. did not use, and does not have, the data set employed by Yan and Park in the 2005 study, the Coalition’s data request is not properly directed to us. We are not aware that any other party filing initial comments in this proceeding has used the Yan and Park data set or put the Michigan Study into the record in this proceeding. If such a party exists, and if the Commission is inclined to allow discovery of underlying data in this proceeding, the Coalition’s data request would be more appropriately directed to that party.<sup>7</sup>

The Coalition Has Failed To Demonstrate Sufficient Need for Production of Data.

As explained in the preceding sections, the Coalition’s claim that Consumers Union et al. “relied heavily” on the Yan and Park study is unsupported, and Consumers Union et al. neither used nor possesses the requested data set. These two reasons alone provide a sufficient basis for the Commission to immediately dismiss the Coalition’s Data Request. But there is a third equally fatal flaw in the Coalition’s request. The Coalition’s litany of “apparent flaws and limitations” in the Michigan Study is

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<sup>7</sup> Consumers Union et al. do not believe that the Commission should permit discovery of the data underlying pre-existing studies that are not put into the record in this proceeding, at least without making all such studies and data discoverable and allowing substantially more time for public comment.

conjectural<sup>8</sup> and, in any event, not statistically significant. The Coalition, at pp. 2-3 of the Data Request focuses on the absolute increase in the number of hours of local news broadcast by weaker stations in duopolies, and concludes that “[i]f anything, the data supports the conclusion that duopolies help weaker stations to provide more local news.” The Coalition does not purport to show that the absolute increase in the number of hours is statistically significant, much less rebut the conclusion that Yan and Park, who utilized a rigorous research design and proven methods of scientific research, and reached a much different conclusion: that “the significant increases in local news programming experienced by the three types of stations were all attributable to the major stations.”<sup>9</sup> At bottom, the Coalition’s claim that the Michigan Study is flawed rests entirely on the fact that rigorous statistical analysis does not support the pro-duopoly position of the Smaller Market Broadcasters Coalition. Access to the underlying data set is not going to change the result of the statistical analysis.

Any Discovery Should Provide Fair Access and Additional Time for Review.

For the reasons stated above, Consumers Union et al. oppose the grant of the Data Request. The Michigan Study, like all of the studies cited in our comments, is properly cited and readily available. The claims of the Smaller Market Broadcasters Coalition are in the nature of reply comments which can easily be refuted by other interested parties either in reply comments or in authorized ex parte submissions.

Nevertheless, if existing studies that are not themselves placed in the record are to be subject to discovery, then the Commission will need to significantly expand the time allotted for reply comments and will also need to provide fair opportunities for other

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<sup>8</sup> See, e.g., p. 2 “Table 2A of the Study seems to indicate something else...” See also p. 3 “Was this...an apples-to-oranges comparison...?”

<sup>9</sup> Compare Data Request at pp. 2-3 with Comments of Consumers Union et al. at pp. 307-310.

parties to submit data requests. Attached as Appendix A is an initial list of studies cited in industry comments which have not been submitted for the record. If the Commission decides to permit discovery of such studies, we would like discovery on the studies listed in Appendix A. Unlike the studies cited in the initial comments of Consumers Union et al., some of the studies listed in Appendix A are not readily available, as they are either trade publications or reports not in the public domain. Appendix A is an initial list, and is not intended to be all-inclusive or final, but only preliminary and illustrative.

### CONCLUSION

For the reasons set forth above, Consumers Union et al. urge the Commission to dismiss the “Coalition Request for Underlying Data.” In the alternative, if the Commission decides to permit discovery of studies cited in party comments which have not been submitted into the record of this proceeding, we request that the Commission provide fair opportunities for discovery of studies including those listed in Appendix A to these Comments and allow sufficient additional time for parties to review and comment upon those studies following the close of discovery.

Respectfully submitted,

/s/ Larry A. Blosser

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Larry A. Blosser  
Counsel for Consumers Union, Consumer  
Federation of America and Free Press

Dated: December 12, 2006

## Appendix A Conditional Data Request

### Data

NAB 10: S. Lacy, D.C. Coulson and H. Cho, *Competition for Readers Among U.S. Metropolitan Daily, Nonmetropolitan Daily and Weekly Newspapers*,

NAB 13: John B. Horrigan, *Home Broadband Adoption*

NAB: 14 Center for Digital Future, *Surveying the Digital Future: A Longitudinal International Study of the Individual and Social Effect of PC/Internet Technology*

NAB 18: Lada Adamic and Natalie Blance, *The Political Blogosphere and the 2004 U.S. Election: Divided They Blog*

NAB 18: Amanda Lenhart and Susannah Fox, *Bloggers: A Portrait of the Internet's New Storytellers*

NAB 24: John C. Buserma, *Television Station Ownership Effects on Programming and Idea Diversity: Baseline Data*

NAB 24: S. Lacy, T. Atwater, and X. Quin, *Competition and the Allocation of Resources for Television News*

NAB 24: Angela Powers, *Toward Monopolistic Competition in U.S. Local Television News*

NAB 25: August Grant, *The Promise Fulfilled: An Empirical Analysis of Program Diversity on Television*

NAB 29: Jack Myers Media Business Report, *2006 Marketing and Advertising Spending Forecast*

NAB 37: Richard van der Wurff and Jan van Cuiling, *Impact of Moderate and Ruinous Competition on Diversity: The Dutch Television Market*

NAB 39: Benjamin J. Bates and Todd Chambers, *The Economic Basis for Radio Deregulation*

NAB 40: Steven Berry and Joel Waldfoegel, *Mergers, Station Entry, and Programming Variety in Radio Broadcasting*

NAB 40: Steven Berry and Joel Waldfoegel, *Do Mergers Increase Program Variety?*

NAB 44: Ronald Hicks and James Featherson, *Duplication of Newspaper Content in Contrasting Ownership Situations*

NAB 44: Lisa George, *What's Fit to Print: The Effect of Ownership Concentration on Product Variety in Daily Newspaper Markets*

NAB 51: John Dimmick, Yan Chen and Zhan Li, *Competition Between the Internet and Traditional News Media: The Gratification-Opportunities Niche Dimension*

NAB 51: Pew Research Center for the People and the Press, *2006 News Consumption and Believability Study*

NAB 74: Edison Media Research, *Follow-up Edison Media Search Study on 12-24 Radio Listening Shows Sharp Decreases in TSL and Usage*

NAB 75: R. B. Eklund, Jr., G.S. Ford and T. Koutsky *Market Power in Radio Markets: An Empirical Assessment*

NAB 77: Charles Romeo and Andrew Dick, *The Effect of Format Changes and Ownership Consolidation on Radio Station Outcomes*

NAB 36: Adam Jacobsson, Eva-Maria Jacobsson, C. Ann Hollifield, Tudor Vlad, and Lee Becker, *Examining the Suspected Adverse Effects of Competition on Media Performance*

NAB 49: Benjamin J. Bates, *Concentration in Local Television Markets*

NAB 116: RTNDF, *2003 Local Television News Study of News Directors and the American Public*

NAB 117: John c. Buserma, *Ownership, CATV and Expenditures for Local Television News*

Gannett 18: Pew Internet & American Life Project *Online News: For Many Home Broadband Users*

Gannett 19: *Harris Poll #35*

Gannett 23: Pew Research Center for the People and the Press, *Cable and Internet Loom Large in Fragmented Political News Universe*

Gannett 23: Pew Research Center for the People and the Press, *Maturing Internet News Audience*

Gannett 24: Center for Media Design, *Middletown Media Studies*

## **Report and Data**

NAB 13: Bill Rose and Joe Lenski, *Internet and Multimedia 2006: On-Demand Media Explodes*

NAB 26: Forrester Research, *Forrester Research Defines the Future of Digital Radio*

## **Reports**

NAB 32: Veronis Suhler Steenson, *Communications Industry Forecasts 2005-2009*

NAB 33: Mark Walsh, *Craigslist Traffic Surges*

NAB 48: Anne Hoag and Sangho Seo, *Media Entrepreneurship: Definition Theory and Context*

NAB 54: Bridge Ratings, *Bridge Ratings Audience Erosion Study 2006-Q2*

NAB 60: Bob Papper, *News, Staffing and Profitability Survey*

NAB 74: Media Dynamics, Inc., *Radio Dimensions 2005*

Gannett 40: Viictor B. Miller IV, Bear Stearns and Co. *Radio: a Crude Recovery*

## Certificate of Service

I hereby certify that copies of the foregoing Comments Of Consumers Union, Consumer Federation Of America And Free PressOn “Coalition Request For Underlying Data” were sent this 12<sup>th</sup> day of December, 2006 via first class United States mail, postage prepaid, to the following:

Jonathan D. Blake  
Jennifer A. Johnson  
Matthew S. DelNero  
Enrique Armijo  
Covington & Burling  
1201 Pennsylvania Ave. NW  
Washington, DC 20004-2401

*Counsel for Smaller Market  
Broadcasters Coalition*

/s/ Larry A. Blosser  
Larry A. Blosser